

TEXAS ALCOHOLIC BEVERAGE COMMISSION
COMMISSION MEETING
FRIDAY, MAY 25, 2001

The Texas Alcoholic Beverage Commission met on this date in Room 185 at 5806 Mesa Drive, Austin, Travis County, Texas. Members present: Allan Shivers, Jr., Chairman; John T. Steen, Jr., Member and Gail Madden, Member. Staff present: Randy Yarbrough, Assistant Administrator; Lou Bright, General Counsel; Jeannene Fox, Director of License & Compliance; Greg Hamilton, Chief of Enforcement and Denise Hudson, Director of Resource Management. Present to receive certificates of service: Judy Kocian, Headquarters Compliance; Art Munsell, Corpus Christi Enforcement; Mike Parmley, Nacogdoches Enforcement and Douglas Postert, Uvalde Enforcement. Visitors included: Fred Marosko, Texas Package Stores Association; Robert Sparks, Licensed Beverage Distributors, Inc.; Rick Donley, Beer Alliance of Texas and Penny McLeskey, Lehman McLeskey.

The agenda follows:

1:30 p.m. - Call to order.

1. Recognition of agency employees with 20 or more years of service.
2. Approval of minutes of April 9, 2001 and April 23, 2001 meetings; discussion, comment, possible vote.
3. Administrator's report:
 - a. discussion of staff reports;
 - b. recognitions of achievement; and
 - c. discussion of management controls.
4. Fiscal stewardship of agency; discussion, comment, possible vote.
5. Public comment.

Announcement of executive session:

6. The commission will meet in executive session under the authority of §551.074 of the Government Code to discuss hiring an administrator, consider applications and interview applicants for the administrator's position.

Continue open meeting.

7. Take action, including a vote if appropriate, on topics listed for discussion under executive session.
8. Adjourn.

The meeting was called to order at 1:33 p.m. by Chairman Shivers.

MR. SHIVERS: I will call this meeting of the Texas Alcoholic Beverage Commission to order. It is Friday, May 25th at one thirty-three in the afternoon.

First, as usual, we want to recognize employees who have been with this agency for 20 years or more.

First is Judy Kocian, who is a project coordinator in our compliance division. She joined the agency on May 18, 1981 as a secretary. Throughout her career with the TABC, Judy has continually been recognized as a hard-working individual. We congratulate her on 20 years of dedicated service to the TABC and the citizens of Texas. Will you come up, please? Congratulations.

MS. KOCIAN: Thank you.

MR. SHIVERS: Next is Art Munsell, an Agent IV in the Corpus Christi office. He joined the agency on May 4, 1981. During his career with the agency, Agent Munsell has worked in San Angelo, Brownwood, Laredo and Houston. He is a certified intoxilyzer operator, firearms instructor and standardized field sobriety testing instructor. Art, congratulations. We thank you for all you've done for the state. Will you come up, please?

MR. HAMILTON: He also brought his family, and his supervisors are here.

MR. SHIVERS: Will they all please come up? It's wonderful to have all of you here.

MR. MUNSELL: Thank you.

MR. SHIVERS: Mike Parmley joined the TABC on May 4, 1981 as an agent in our Houston district office. Agent Parmley was promoted to Agent II in September 1985. In June 1995, he was transferred to the Nacogdoches outpost where he continues to work today as an Agent V. We congratulate Agent Parmley on his 20 years of service to the TABC and the citizens of Texas. Will you come up, please?

MR. HAMILTON: We also have his supervisor here - Lieutenant Traywick.

MR. SHIVERS: Come on up, Bill. Mike, congratulations.

MR. PARMLEY: Thank you, sir.

MR. SHIVERS: Douglas Postert, an agent in the Uvalde outpost, joined the agency on May 4, 1981. During his career with the TABC, Agent Postert has worked in a variety of locations, including Odessa, Hondo and San Antonio. Agent Postert is highly admired and respected by his peers and his supervisors. Congratulations. Will you come up, please?

MR. HAMILTON: And his wife is here.

MR. POSTERT: My fiancée.

MR. SHIVERS: Greg, you pushed him a little hard there. Congratulations.

MR. POSTERT: Thank you.

MR. SHIVERS: Congratulations to all of you. We want you to know how much we appreciate what you do for the agency and the hard work you've done.

The minutes of last month's meetings have been mailed to the commission. Are there any changes to be made? The minutes of April 9th and April 23rd.

MS. MADDEN: No.

MR. SHIVERS: Do I have a motion to approve the minutes of those two meetings?

MS. MADDEN: I so move.

MR. SHIVERS: Second. All in favor, say aye.

MS. MADDEN: Aye.

MR. SHIVERS: Aye. Opposed?

Randy, will you give us the administrator's report, please?

MR. YARBROUGH: Mr. Chairman and Members, we have several things. I've added a couple of things to your book that are just inside the front cover. One, you will find, is a copy of the internal audit of the accounting system. *Accounting Internal Controls* is the final draft report. That was just e-mailed to me shortly before lunch. We have talked to our internal auditor. He's met with our accounting staff and we're generally in agreement with everything in that report. He's making some suggested changes. He's very complimentary of our accounting people and we have tentatively scheduled to have him appear next month at our commission meeting to go over that report with you and to answer any questions you may have. I told him that we would give you a copy of the report so you could be looking over it and see if there's anything that may arise that may lead to questions.

They are already well into their next project. We find that that has been a very wise choice in the firm that we've contracted with. They are working

very well with our staff, and we appreciate the recommendations that they have come up with generally to just help us shore up our controls.

In addition, in the front of your book, you will find a copy of the budget in Senate Bill 1 pertaining to the Alcoholic Beverage Commission as recently adopted. It's from the conference committee report that the house adopted day before yesterday and the senate adopted yesterday. In those dollars is not included the across-the-board pay raises, the four percent offered by the legislature. That's in riders in Article IX of the bill, but that will give you a basic staffing of where we are. We are a little ahead of the game, which we said all along that anything that would come out on the plus side is good. We were able to pick up an additional four FTE's in licensing to help us get caught up with some of the backlog, as well as the additional ports of entry personnel to cover some of those bridges.

We worked out, with Jeannene's help and the comptroller's help, a creative rider, a contingency on the ports of entry because we don't really know in terms of revenues when we staff those additional hours and additional areas whether we will get enough to cover the expenses. However much they can certify, we can spend up to that much. So, it's not an all or nothing type of thing. We've delayed the capital expenditures, then, into the second year on that, so we think we'll be able to get the revenues up enough to cover the additional amount that we need in the ports of entry.

I think it would be fair to say because of the increases in the budget that we'll begin working right away on surcharges. There will be an increase required in the surcharges to cover the agency's budget, and we will begin working with licensing staff, along with everyone else, to come up with additional amounts that we will need to do. We will need to put that as a rule amendment on the agenda for adoption later on in the summer. I believe to make that effective September 1st, we will need to do that at the July meeting, if memory serves me right, to get that in place and effective before September 1st, so we will be working on that.

Under your tab number three, I have inserted a list...actually two sections. The first two pages are bills that you recommended changes back in our November meeting for the legislature to consider. Of the 14 pieces of legislation that we took over to the capitol and asked them to consider, six of those have passed and gone to the governor. One has actually been signed by the governor and will become law September 1st, and that's doing away with two permits. Mr. Chairman, you said early on you didn't think we would ever accomplish going down and I think we actually...

MR. SHIVERS: I was almost afraid to ask for that because last time it started multiplying.

MR. YARBROUGH: We actually are reducing, even though we haven't issued any of these, the physician's and medicinal's permits will go away. The other ones will allow us to accept credit cards and other forms of payment for license and permit fees, which is very important in dealing with e-commerce. That will help us in that respect, as well as some riders they put in the appropriations bill that will cover any increases that we need to cover. Charges, for example, for credit card expenses are automatically reappropriated back to us since it's just purely a wash.

Working with TRA, we were able to change some of the percentages in the food and beverage certificate of alcohol sales from 75 percent to 50 percent. That has changed. It has been passed. Also, some other clean up language relating to the food and beverage certificate. Every time that we, as you are well aware in our rules, passed a rule or statute that we wanted to apply to those people holding a food and beverage certificate, we had to re-create that. We had to state that those sections also applied to food and beverage certificates. That will no longer be necessary. It will make the code less wordy and less likely to be errors made.

Finally, we have gotten through the ability to waive the performance bond. It was never collected on and that Jeannene has had to keep up with and keep records on. By rule, the way it was finally drafted by the Legislative Council, it says that we can set standards by which we can waive performance bonds. We will be working on rule drafts shortly if the governor signs that to allow exemption for that. It should help an awful lot.

Senator Cain carried a bill for us to extend the grace period for people to file renewals. This is something we think will be very beneficial. As recently as yesterday, I had someone call and said their permit had expired. It was beyond the 10-day grace period so they have to start getting a whole new original permit. This will now give 30 days, which ought to have two factors. One, it will give them an additional period to get their permit renewed but, more importantly, it will give us a chance to work those files and call people to make sure if they are going to renew, they have done so within that grace period so we don't have to start over and do new originals.

The next few pages are a list of the other bills that amend the Alcoholic Beverage Code. These are bills that have already passed or looks like they will pass. Then, I've got the matrix chart that I've been sending you each

week highlighted as to which bills have passed. Those are bills that will have an impact on the Alcoholic Beverage Code. Some of these will have no real impact on what you need to do in terms of rules. Others will and we'll be working on that. It's my intention, after next week and we know what all has gone through, that we will get staff together and we will disseminate all the bills that have passed. We will be making a book that we will send to you to outline all the bills that passed and to determine which ones will need rules that we will start working on immediately, as well as those that will not require any additional effort.

As usual, anytime there is a change, it does require us to change forms. It requires us, then, to reprint things. We are trying to do as much as we can on that through the internet portal to make that available. But it still requires us to do some printing and things of that nature, and we hope we can have all that done and in place by September 1st.

MS. MADDEN: I assume you are going to give a report at the next meeting...

MR. YARBROUGH: I will send you, before the next meeting, a list of all the bills, along with the text from those bills....

MS. MADDEN: Could you also include in that how that impacts our budget?

MR. YARBROUGH: Yes. That's one thing we try to do a good job of writing fiscal notes on bills that come into play. None of those fiscal notes were significant enough that they saw to add additional contingency appropriations on. Although, for the first time that I can recall, there is a rider in the budget that says if there is a financial impact on an agency because of legislation and they did not give you additional money, they do not expect you to expend money from other purposes to accomplish that. If you can do it within your regular work, but not do something that you are budgeted for just to accomplish a new piece of legislation. Essentially, "We are not going to pass legislation and have it fall on agencies, just like on taxpayers, to do something that has additional cost if we are not going to fund it."

We don't think there's anything that will be terribly expensive. Most of the time, it will be shift some of the priorities, as well as just some start up costs that are always inevitable just because of printing and things like that. We try to get our supplies, things like the Alcoholic Beverage Code, down to as few as possible before we have a legislative session so that we don't have to print up another 1,000 copies of the code when we have 2,000 sitting in the warehouse. We try to manage that knowing that

there's going to be change coming up.

I think that's all that we have unless you have questions on performances of the divisions from this month.

MR. STEEN: Mr. Yarbrough, on the legislative things you were just talking about, review with me the process when we have legislative change recommendations. Just summarize that. How do we end up getting a bill created and sponsored?

MR. YARBROUGH: Only the board can make recommendations for legislative change from state agencies because state employees are prohibited from lobbying for changes. So, the commissioners, when you all took those recommendations and voted on those that you thought would be good changes, pretty much clean up things in the code last November, then we can, acting on your behalf, can go to the legislature and make that known. If a legislator wishes to take that and have a bill filed - and there are a number of them that are happy to do that - then it goes through the legislative process. We provide expert testimony.

Mr. Bright, Mr. Hamilton, Ms. Fox and I spend a number of hours in various committees. In the house, generally all bills amending the Alcoholic Beverage Code go to the Licensing and Administrative Procedures Committee. In the past, all bills in the senate went to the Business and Commerce Committee or Senator Sibley's committee. They keep changing the names. This session, there was five or six different committees in the senate that our bills went to, so we found ourselves many times with two or three hearings scheduled in the same afternoon, and we spread out and provided testimony only as an expert witness if members of the legislature had a question.

We make it very clear that we are not lobbying for that. I know that there has been some articles in the paper about higher education, primarily, on the budget side doing quite a bit of lobbying of the legislature. We try to walk that tight rope very carefully as being there to provide information and answer questions without taking a lobbying position. We can say these are changes that our board has recommended - "The Texas Alcoholic Beverage Commission officially has taken action on," but that is the strongest statement that we can make other than just answering questions that people may have - "If we make this change, what will be the impact?"

MR. STEEN: Actually, what you addressed was what was on my mind. Thank you very

much.

MR. SHIVERS: Any questions on performance measures?

MR. STEEN: No.

MS. MADDEN: No.

MR. SHIVERS: It appears overall we are doing pretty well on our expenditures.

MR. YARBROUGH: Because we had a tight budget, we've had everyone who has monthly been very attuned to that. Probably well over 80 percent of our entire budget is salaries, anyway, so we don't have a lot of discretionary expenditures. Then, when you consider the fixed cost that we have on such things as office space and utilities, and so forth, telephone, and routine things - we are budgeted for gasoline for our enforcement people, for travel costs for our compliance people - then there isn't a lot of discretionary expenditures. We've been really trying to keep everyone on a month-to-month tight budget.

That's one of the things that the internal auditor was very pleased with looking at our reports that we give to all of our department heads - the amount of information, the detail level, so they can know where they stand on the budget. Apparently, compared to a lot of other agencies, we do a lot more detail than most agencies. I think that's been able to help us keep within the budget. We've had some salary savings that will cover some of the shortfalls we've had in certain budget areas, and we will be having another budget meeting later on this month to determine reallocations and what we need to do to get ready for next year.

We have some planned expenditures that we shift to fourth quarter so we make sure we know what revenues we will have. Some of those things that we can do without if revenues don't become available or unexpended budgets that we can do. Otherwise, we can do without. We are looking at that as we start the fourth quarter that we may have a few expenditures. But, overall, it's going to be very tight this year and we don't expect a whole lot of budget amendments or changes except to pay for things like gasoline. We are seeing the same thing everybody else does, the cost has gone up. Telephone expenses, where we may have budgeted a little short.

MR. SHIVERS: What did we do on our request to the legislature for that rider?

MR. YARBROUGH: The gasoline rider?

MR. SHIVERS: Yes.

MR. YARBROUGH: We did not have that rider adopted. Denise will talk in terms of our fiscal stewardship and our caps in a moment, but you had asked me earlier about the caps for travel. The legislature, after much deliberation, decided to give some relief to all state agencies in terms of the travel cap. They have removed the cap for in-state travel. They still do want to see some reporting and have caps for out-of-state travel for state agencies, so that will give us some relief in terms of having to worry. It frankly has not been a problem for travel caps this year because our budget has been so lean that we couldn't even budget enough up to the cap. So, there was no threat to going over the travel cap this year.

MR. SHIVERS: Speaking of our friends in the legislature, what did they do about the State Office of Administrative Hearings and the complaints our agency had about the charges?

MR. YARBROUGH: We deliberated back and forth two or three different riders and changes. All that being said, they ended up with the same rider they've had in the past with the exception they changed the base period year, which should take us out of the problem area. The one problem we had was the year they were basing it on before was such a low year because we had a tremendous turnover in attorneys and we weren't having many hearings, we were immediately going over the amount they had allocated for us. We now have 110 percent of what we have done this biennium, which should cover us. I can't imagine, unless we have changes out of the ordinary, that we won't be able to stay within that budget, so it shouldn't be a fiscal impact on us.

MR. SHIVERS: Good.

Denise, you have anything you want to tell us?

MS. HUDSON: I'll be happy to answer any questions you have on the fiscal stewardship reports. We have Charlie here who can address some of the caps and Gene that can talk about office leases if you have any questions.

MR. STEEN: Ms. Hudson, thank you for doing all this work. I would ask you to summarize our situation with the leases.

MS. HUDSON: You can see we've got some that are coming up. Most of them are field offices. There are about eight of those, and those are going up it looks like an average of about eight percent. We anticipate those to be increasing.

MR. STEEN: On this measure we have of square feet per employee, we are improving every year on that?

MS. HUDSON: Most of the leases that you see coming up in the next year, because they have so few people in them, are exempt from that square footage. I don't believe that this time there are any plans to add any new square footage at these locations.

MR. YARBROUGH: I think, Mr. Steen, the thing that's significant in that chart is that in those that we do have the limitation on square footage, we have consistently gone down in the number of square footage. More importantly has been, if you look immediately above that, office rate per square foot has gone from \$12.14 in 1996 to \$14.07 a square foot in all of our offices without significant increases in office rental budgets. That would just mandate that we need to conserve as much as we can when we have any offices coming up for lease, to shave space and make them as accommodating as possible within a budget. That will be something I think we are going to continue to look at. Maybe with the recession or the slowdown in the economy - not so much a recession - that we won't see quite as escalating rents but we are still going to see quite a competition in some of these areas of the state to have nice office space with reasonable offices and not escalating our rents, and we are going to try to toe the line within our current budget which will necessitate in many cases just seeing where we can make it fewer square feet in some places. Without a significant increase in the number of employees in the budget, we think that we can do that. We don't anticipate the need for a tremendous amount of additional office space by any needs. We are working pretty much on a status quo.

MR. STEEN: What about the space we are in now?

MR. YARBROUGH: The space we are in now, we have extended our lease for another five years. We have no intention of increasing the number of square footage here. We were able to renegotiate a pretty good lease compared to what is going on in Austin, Texas this past year, even though we had to do that at the height of the market peak. We have an escalator in that, but we think that's going to be tied to the economy so it may not impact us as much as what we were even thinking at the time we negotiated the lease. Every time we have gone out for bids in headquarters space, we have reduced the square footage.

We are down to the point where this is about the last room we could do away with and we fought to try to keep a meeting room for the commissioners unless you want to meet on the parking lot or we would

have to go to the capitol to find meeting space. We have consolidated an awful lot. When we moved in here, we had the first two floors and part of the third floor. We are down to about a floor and a half now of the building. So, we have consolidated quite a bit in the time we've been here.

MR. SHIVERS: There is a large agency or two where the commissioners and staff meet and any audience just stands against the wall. I guess we can do that.

MR. YARBROUGH: We spend a lot of time as staff people standing against the wall down at the capitol so I think the staff would be quite used to that.

MR. SHIVERS: Anything else?

MS. MADDEN: I wanted to ask the staff, we had a couple of editorials in the *Dallas Morning News* quite recently about some of the things that are happening in South Dallas regarding bars, and what have you, that are very close to the schools. Just to get on the record, I'd like for you all to tell us what you are doing about it. I believe they were referring to the alcohol-free zones, and you all had a meeting. If you can brief the commissioners, I think it would be very helpful.

MR. YARBROUGH: Jeannene, I think you have been working with Ms. Giddings' office on that.

MS. FOX: We recently went to Dallas to attend a meeting hosted by Representative Giddings in reference to alcohol-free zones. There are 13 or 14 schools in Dallas that have been declared alcohol-free zones. Out of those, what we reported in 1996 when this first started, there were 66 alcoholic beverage establishments within those alcohol-free zones. Basically, what the law that was passed says is that if you have over 50 percent alcoholic beverage sales and you have a violation of sale to minor, intox and some other type of violations along that same line, that you would not be able to renew your permit, but as long as you do not have those type of violations, then you could continue renewing even though you are within the alcohol-free zone.

At this time there are now, I believe, 37 or 38 permits that remain out of that original 66. There's only been one new permit added in that area which was a wine and beer off-premise permit. That was kind of done a little bit by oversight because they changed the name of Oakland Street to Malcolm X Boulevard and we basically were unaware they changed the name of the street, so we didn't know to put a stop on that. I do believe,

and after looking at it, that it would probably qualify anyway because it does meet the requirements of a convenience store and so far their sales have been under 50 percent alcoholic beverages, so alcohol-free zones would not apply.

This meeting was attended by city council members, school district members, reporters - I'm sorry, I'm going blank of who all was there - Dallas Police Department and many other members that were cooperating in those areas trying to look at those troublesome spots within those school zones.

MS. MADDEN: There is an initiative by a community leader in Dallas that's kind of stirred all of this up. I just thought it would be good if you brief the other commissioners because something might be coming up in your own communities. I think your efforts are right on target.

MR. HAMILTON: The news article that you are talking about was shared with me by Mr. Bright. I plan on visiting with the chief of police up in Dallas and hopefully getting some of their faith groups and some of the neighborhood watch groups to get together and come up with a plan to address that issue.

MS. MADDEN: That would be great. Thank you.

MR. STEEN: How is an alcohol-free zone created?

MS. FOX: That particular statute only applies to Dallas, San Antonio and Houston - that's municipalities over 900,000. The school board will ask the city council to declare them an alcohol-free zone. The City of San Antonio has not done that. The City of Houston, they did it in a big fashion. They declared every school in that school district an alcohol-free zone. So they have like 250 schools in Houston which that affects. Dallas has only looked at those schools which are actually in problem areas or they have experienced a lot of difficulty in the past.

MR. STEEN: If you declare an area an alcohol-free zone then what happens?

MS. FOX: You can't have any alcoholic beverage establishments within 1,000 feet. For those that are already there, they may remain. If they are over 50 percent alcoholic beverage sales, then they may remain unless they have some type of violation which would keep us from renewing their permit.

MR. SHIVERS: Violation involving a sale to a minor?

MS. FOX: Generally. Place or manner, breaches, things of that nature. Not just sale to minor.

MR. SHIVERS: I'm sure our friends in the package store business find that a fairly onerous restriction, but they can certainly understand it from the school district's point of view.

MS. MADDEN: That's right. Thank you.

MR. STEEN: Thank you.

MR. SHIVERS: The commission will now go into a closed executive session to discuss hiring an administrator and consider applications for the administrator's position pursuant to Texas Government Code, 551.074. If the audience will please excuse us? Mr. Bright, would you remain?

MR. BRIGHT: I will, sir.

The commission convened in executive session at 2:05 p.m. and reconvened in open meeting at 4:17 p.m.

MR. SHIVERS: The commission meeting of May 25, 2001 is now back in open session. During executive session no votes were taken, no final decisions were made. The commission delegated to Lehman-McLeskey the task of selecting the finalists for interviews for the position of administrator and scheduling the interviews for the commission.

Any other business to come before us? Motion to adjourn?

MS. MADDEN: So moved.

MR. STEEN: Second.

MR. SHIVERS: We are adjourned at four nineteen. Thank you.